

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ADJUSTACAM LLC
Plaintiff

v.

AMAZON.COM, INC. *et al.*,
Defendants

Case No. 6:10-cv-329-LED

JURY TRIAL DEMANDED

**DEFENDANT OFFICE DEPOT, INC.'S ANSWER TO PLAINTIFF'S FIRST
AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Defendant Office Depot, Inc. ("Office Depot") hereby files its Answer to the First Amended Complaint for Patent Infringement ("Complaint"), filed by AdjustaCam LLC ("Plaintiff") in the above-captioned matter, and states as follows:

ANSWER

Parties

1. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint, and therefore denies them.
2. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint, and therefore denies them.
3. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint, and therefore denies them.
4. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Complaint, and therefore denies them.
5. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint, and therefore denies them.

6. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint, and therefore denies them.

7. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Complaint, and therefore denies them.

8. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint, and therefore denies them.

9. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint, and therefore denies them.

10. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint, and therefore denies them.

11. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint, and therefore denies them.

12. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint, and therefore denies them.

13. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint, and therefore denies them.

14. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint, and therefore denies them.

15. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint, and therefore denies them.

16. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint, and therefore denies them.

17. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint, and therefore denies them.

18. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Complaint, and therefore denies them.

19. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Complaint, and therefore denies them.

20. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Complaint, and therefore denies them.

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22. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Complaint, and therefore denies them.

23. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Complaint, and therefore denies them.

24. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the Complaint, and therefore denies them.

25. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the Complaint, and therefore denies them.

26. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the Complaint, and therefore denies them.

27. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the Complaint, and therefore denies them.

28. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the Complaint, and therefore denies them.

29. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the Complaint, and therefore denies them.

30. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the Complaint, and therefore denies them.

31. Office Depot admits that Office Depot has a place of business in Florida, but denies that it is located in Delray Beach, Florida. Office Depot has a place of business in Boca Raton, Florida.

32. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of the Complaint, and therefore denies them.

33. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the Complaint, and therefore denies them.

34. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of the Complaint, and therefore denies them.

35. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35 of the Complaint, and therefore denies them.

36. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the Complaint, and therefore denies them.

37. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the Complaint, and therefore denies them.

38. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the Complaint, and therefore denies them.

39. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 of the Complaint, and therefore denies them.

40. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40 of the Complaint, and therefore denies them.

41. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 of the Complaint, and therefore denies them.

42. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42 of the Complaint, and therefore denies them.

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44. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 of the Complaint, and therefore denies them.

45. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 of the Complaint, and therefore denies them.

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49. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49 of the Complaint, and therefore denies them.

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56. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56 of the Complaint, and therefore denies them.

57. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 57 of the Complaint, and therefore denies them.

Jurisdiction and Venue

58. Office Depot admits that Plaintiff avers that this is an action arising under the patent laws of the United States, title 35, United States Code. Office Depot admits that this Court has jurisdiction over the subject matter of this action. Each and every other allegation contained in paragraph 58 is denied to the extent that these allegations relate to Office Depot. Office Depot is without information or knowledge sufficient to admit or deny the remaining

allegations contained in paragraph 58 of the Complaint with respect to any of the other Defendants in this action, and therefore denies such allegations.

59. Office Depot admits that Plaintiff avers venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1400(b). Each and every other allegation contained in paragraph 59 is denied to the extent that these allegations relate to Office Depot. Office Depot is without information or knowledge sufficient to admit or deny the remaining allegations contained in paragraph 59 of the Complaint with respect to any of the other Defendants in this action, and therefore denies such allegations.

Count I – Infringement of U.S. Patent No. 5,855,343

60. Office Depot admits that the United States Patent No. 5,855,343 (“the ‘343 Patent”) is titled “Camera Clip.” Office Depot admits that, on its face, the ‘343 Patent states that it was filed on March 7, 1997 and that it was issued on January 5, 1999. Each and every other allegation contained in paragraph 60 of the Complaint is denied.

61. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 61 of the Complaint and therefore denies them.

62. Office Depot denies each and every allegation contained in paragraph 62 of the Complaint.

63. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 63 of the Complaint and therefore denies them.

64. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 64 of the Complaint and therefore denies them.

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150. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 150 of the Complaint and therefore denies them.

151. Office Depot denies each and every allegation contained in paragraph 151 of the Complaint.

152. Office Depot denies each and every allegation contained in paragraph 152 of the Complaint.

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154. Office Depot denies each and every allegation contained in paragraph 154 of the Complaint.

155. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 155 of the Complaint and therefore denies them.

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221. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 221 of the Complaint and therefore denies them.

222. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 222 of the Complaint and therefore denies them.

223. Office Depot denies each and every allegation contained in paragraph 223 of the Complaint to the extent that these allegations relate to Office Depot. Office Depot is without information or knowledge sufficient to admit or deny the remaining allegations contained in paragraph 223 of the Complaint with respect to any of the other Defendants in this action, and therefore denies such allegations.

224. Office Depot denies each and every allegation contained in paragraph 224 of the Complaint to the extent that these allegations relate to Office Depot. Office Depot is without information or knowledge sufficient to admit or deny the remaining allegations contained in paragraph 224 of the Complaint with respect to any of the other Defendants in this action, and therefore denies such allegations.

225. Office Depot denies each and every allegation contained in paragraph 225 of the Complaint to the extent that these allegations relate to Office Depot. Office Depot is without information or knowledge sufficient to admit or deny the remaining allegations contained in paragraph 225 of the Complaint with respect to any of the other Defendants in this action, and therefore denies such allegations.

226. Office Depot denies each and every allegation contained in paragraph 226 of the Complaint to the extent that these allegations relate to Office Depot. Office Depot is without

information or knowledge sufficient to admit or deny the remaining allegations contained in paragraph 226 of the Complaint with respect to any of the other Defendants in this action, and therefore denies such allegations.

Prayer for Relief

To the extent a response is required to Plaintiff's prayer for relief, Office Depot admits that Plaintiff seeks various forms of relief in this action. Office Depot denies that Plaintiff is entitled to any relief in this action to the extent such relief relates to Office Depot. Office Depot lacks knowledge or information sufficient to form a belief as to the truth of the allegations that Plaintiff is entitled to relief with respect to any of the other Defendants in this action, and therefore denies such allegations.

Additionally, all allegations of the Complaint not expressly admitted herein are denied.

Jury Demand

Office Depot admits that Plaintiff requests a trial by jury, but denies that Plaintiff is entitled to any relief in this action, including, but not limited to, all relief that Plaintiff requests in its Prayer for Relief.

AFFIRMATIVE AND OTHER DEFENSES

Office Depot asserts the following affirmative and other defenses, and reserves the right to amend its Answer as additional information becomes available and additional defenses become apparent.

First Defense
(No Infringement)

227. Office Depot does not infringe and has not infringed, either directly, contributorily, or by inducement, any claim of the '343 Patent, either literally or under the doctrine of equivalents.

Second Defense
(Invalidity)

228. The claims of the '343 Patent are invalid for failure to comply with one or more provisions of the patent laws of the United States of America, Title 35, United States Code, including, but not limited to, 35 U.S.C. §§ 101, 102, 103, and/or 112.

Third Defense
(Limitation on Damages)

229. Plaintiff's recovery for alleged infringement of the '343 Patent, if any, is limited to alleged infringements committed no more than six years before the filing of the Complaint pursuant to 35 U.S.C. § 286.

Fourth Defense
(Patent Marking and Notice)

230. Some or all of Plaintiff's claims are limited by failure to comply with the marking and notice requirements of 35 U.S.C. § 287.

Fifth Defense
(Waiver and/or Equitable Estoppel)

231. Plaintiff's claims are barred by the doctrines of waiver and equitable estoppel.

Sixth Defense
(Laches)

232. Plaintiff's claims are limited by the doctrine of laches.

Seventh Defense
(License, Implied License and/or Patent Exhaustion)

233. Plaintiff's infringement claims are barred by one or more of the doctrines of license, implied license and patent exhaustion.

Eighth Defense
(Unclean Hands)

234. The claims of the '343 Patent are unenforceable under the equitable doctrine of unclean hands.

Ninth Defense
(Prosecution History Estoppel)

235. Plaintiff's claims are barred under the doctrine of prosecution history estoppel.

Tenth Defense
(Government Sales)

236. Plaintiff's claims are limited under 28 U.S.C. § 1498.

Eleventh Defense
(Intervening Rights)

237. Plaintiff's claims are barred or limited under 35 U.S.C. §§ 252, 307(b).

Twelfth Defense
(Adequate Remedy at Law)

238. Although Office Depot denies that Plaintiff is entitled to any relief in this action, Plaintiff's request for an injunction or other equitable relief is barred because Plaintiff has an adequate remedy at law; therefore, no basis exists upon which to grant equitable relief.

Thirteenth Defense
(Lack of Standing)

239. Plaintiff lacks standing to assert the '343 Patent, and Plaintiff's complaint should be dismissed for failure to join an indispensable party.

Fourteenth Defense
(Other Applicable Defenses)

240. Office Depot expressly reserves the right to assert any other legal or equitable defenses to which it is shown to be entitled.

PRAYER FOR RELIEF ON PLAINTIFF'S COMPLAINT

WHEREFORE, Defendant Office Depot asks the Court to enter judgment granting the following relief:

A) Denial of Plaintiff's request that Office Depot be found to have infringed the '343 Patent;

B) Denial of Plaintiff's request that Office Depot be found to commit willful and objectively reckless infringement;

C) Denial of Plaintiff's request for an injunction against Office Depot as to the '343 Patent;

D) Denial of Plaintiff's request for damages relating to the '343 Patent;

E) Denial of Plaintiff's request for enhanced damages;

F) Denial of Plaintiff's request that the case be declared exceptional pursuant to 35 U.S.C. § 285 as well as denial of Plaintiff's request for attorneys' fees;

G) Denial of Plaintiff's request for other and further relief;

H) Dismissal of Plaintiff's claims with prejudice and that Plaintiff take nothing therefrom;

I) Declaring this case is exceptional and awarding Office Depot reasonable attorneys' fees as provided by 35 U.S.C. § 285; and

J) An award to Office Depot of such other relief as the Court finds just and proper.

DATED: September 17, 2010

By: /s/ Steven R. Daniels

W. Bryan Farney

Lead Attorney

Texas State Bar No. 06826600

Steven R. Daniels

Texas State Bar No. 24025318

Bryan D. Atkinson

Texas State Bar No. 24036157

DECHERT LLP

300 W. 6th Street, Suite 2010

Austin, Texas 78701

Telephone: (512) 394-3000

Facsimile: (512) 394-3001

E-mails: bryan.farney@dechert.com

steven.daniels@dechert.com

bryan.atkinson@dechert.com

**ATTORNEYS FOR DEFENDANT
OFFICE DEPOT, INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this notice was served on all counsel of record who have consented to electronic service as this district requires. Local Rule CV-5(a)(3)(A).

/s/ Steven R. Daniels